

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

CHRISTOPHER FOSTER, : Case No. 1:16-cv-920
Petitioner, : Judge Timothy S. Black
vs. : Magistrate Judge Stephanie K. Bowman
STATE OF OHIO, *et al.*, :
Respondents. :

**DECISION AND ENTRY
ADOPTING THE REPORT AND RECOMMENDATIONS
OF THE UNITED STATES MAGISTRATE JUDGE (Doc. 78)**

This case is before the Court pursuant to the Order of General Reference in the United States District Court for the Southern District of Ohio Western Division to United States Magistrate Judge Stephanie K. Bowman. Pursuant to such reference, the Magistrate Judge reviewed the pleadings filed with this Court and, on November 2, 2017, submitted a Report and Recommendations. (Doc. 78). Plaintiff filed objections on November 20, 2017. (Doc. 79).¹

¹ In addition to Plaintiff's objections filed November 20, 2017 (Doc. 79), Petitioner also filed three previous motions that, having been reviewed by this Court under the permissive standard afforded to *pro se* litigants, shall be construed as additional objections to rulings by the Magistrate Judge. Accordingly, in addition to Petitioner's most recent objections, the Court shall evaluate Petitioner's other filings: "motion for relief from Magistrate Judge's Order (Doc. 42) combined with motion to strike Defendant's untimely answer as well as (Doc. 49) Order of Magistrate Judge" (Doc. 57); "motion for relief from void bias judgment (Doc. 55) filed by Plaintiff" (Doc. 59); and "motion for relief of parts of Magistrate's Order combined with motions to strike (Docs. 67, 66) and advisory on (Doc. 58) necessity-request" (Doc. 73).

The Court has reviewed Petitioner's objections in full and finds that they are without merit. Petitioner's arguments regarding his pending motion for entry of default and motion for entry of default judgment (Docs. 60, 61) are identical to the arguments that were rejected by the

As required by 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b), the Court has reviewed the comprehensive findings of the Magistrate Judge and considered *de novo* all of the filings in this matter. Upon consideration of the foregoing, the Court does determine that such Report and Recommendations should be and is hereby adopted in its entirety. Accordingly, **IT IS ORDERED** that:

- 1) Plaintiff's motion for preliminary injunction and a temporary restraining order (Doc. 58) is **DENIED**;

Magistrate Judge in her ruling granting Defendant Dr. Ahmed's motion to file an Answer out of time. (Doc. 65, at 7–9). Plaintiff's objections offer no new argument that would persuade this Court to order a default judgment. Accordingly, Petitioner's motion for entry of default and motion for entry of default judgment (Docs. 60, 61) are denied. For similar reasons, each of Petitioner's other filings that have been construed as pending objections (Docs. 57, 59, 73), which also object to the Magistrate Judge's decision to permit the out of time filing of an answer in this case, are also without merit.

Petitioner's objections regarding the recommended dismissal of his additional dispositive motions are also without merit. Petitioner's pending motions for preliminary injunction and/or a temporary restraining order (Docs. 58, 74), motion for judgment on the pleadings (Doc. 76), and "motion for Judge Black to strike [ex]tremely late answer and request (Doc. 62) to file it combined with motion for the Court to order the state cease torture etc." (Doc. 68) all request similar relief—chiefly, that Petitioner be moved to a different correctional facility. As the Report and Recommendations accurately explains, Petitioner bears the burden of proof on these early-stage motions and has provided absolutely no evidence supporting his various allegations regarding his mistreatment at the hands of Defendants. Furthermore and again as explained by the Report and Recommendations, it would be inappropriate to move Petitioner to another facility via preliminary injunction as "[t]he purpose of a preliminary injunction is to maintain the relative positions of the parties until proceedings on the merits can be conducted." (Doc. 78, at 14 (citing *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981))). Accordingly, Petitioner's remaining dispositive motions (Docs. 58, 68, 74, 76) are denied.

Petitioner's objections, rather than providing a legal or factual basis to dispute the well-reasoned Report and Recommendations, instead consist largely of foul, repetitive, and completely unsubstantiated denigrations of the Magistrate Judge's impartiality and character. Petitioner's conduct is in violation of Rule 11 of the Federal Rules of Civil Procedure, which forbids any party (including a *pro se* litigant) from presenting to the Court a pleading for any improper purpose, including harassment. Fed. R. Civ. P. 11(b)(1). Further such behavior will not be tolerated. Petitioner is on notice—further unsubstantiated denigration of the Magistrate Judge or of this Court in future pleadings will result in sanctions, potentially including the summary dismissal of this case.

- 2) Plaintiff's application for entry of default, and motion for default judgment against Dr. Ahmed (Docs. 60, 61) is **DENIED**;
- 3) Plaintiff's multi-part motion to strike and to order the state to cease torture, etc. (Doc. 68) is **DENIED**;
- 4) Plaintiff's motion for preliminary injunction (Doc. 74) is **DENIED**;
- 5) Plaintiff's motion for judgment on the pleadings (Doc. 76) is **DENIED**.

IT IS SO ORDERED.

Date: 12/5/17

Timothy S. Black
Timothy S. Black
United States District Judge